

# *Case Law Update 2006*

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# Gillespie v. Mountain Park Estates, LLC

- As a general rule fraud may not be based upon a promise that is not performed
  - Promisor did not intend to perform
  - Promise was accompanied by statements of existing fact showing promisor had the ability to perform **and those statements were false**
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# Robert Comstock, LLC v. Keybank Nat. Ass'n

- *Fraud can only be a contract defense if the fraud prevented the complaining party from reading the contract*



# Campbell v. Kildew

- *A sham arbitration cannot be used to circumvent the planning and zoning process*

# Argosy Trust v. Wininger

- *The use of an easement may be enlarged as long as reasonable and consistent with normal development*
  - *Width cannot be enlarged because taking more land is increased burden*
  - *Servient owner's use of the easement property cannot increase rights of dominant estate owner*
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# Hughes v. Fisher

- *Claimant for a prescriptive easement must show some independent act signifying adverse use different from the general public*
  - *Location of granted easement may be reformed if the circumstances show it was described improperly*
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# Christensen v. City of Pocatello

- *Easement may not be used for the benefit of property other than the dominant estate*



# Thomas v. Madsen

- *Easement implied by prior existing use requires reasonable necessity at the time of severance*
  - *Time and expense of constructing another road may constitute reasonable necessity*
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# Luce v. Marble

- *Presumption in boundary by agreement that a fence was located to resolve uncertainty or dispute does not apply when that assumption would be unreasonable*

# Adams v. Anderson

- *A conveyance provides constructive notice when it has been acknowledged or **proved, and certified, and deposited with the recorder's office***